



## Making a cross border claim in the EU

Using the European Order for Payment Procedure or  
European Small Claims Procedure

### Where should I issue my claim?

Before considering suing another person or body in a different country it is vital to establish beforehand where you are required to start such proceedings. It is worth bearing this in mind as by starting your proceedings abroad you may well face additional costs and inconveniences. For example you may be required to translate your documents, hire a lawyer or travel to court hearings in another country.

### Claims where the defendant is in another EU Member State

If your dispute is against a person or business in a different Member State, you will have to find out which Member States courts has the jurisdiction to deal with your case. Jurisdiction in cross border cases is governed by EU Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, otherwise known as the Brussels Regulation.

Normally the usual place of residence of the defendant is the country with jurisdiction to process the case. People who normally reside in a particular Member State must, whatever their nationality, be sued in the courts of that Member State.

However, there are exceptions to this so some claims can be brought in another Member State other than where the defendant resides. These exceptions mainly occur in matters relating to:

- a contractual obligation;
- actions for damages;
- matters relating to maintenance;
- consumer contracts, insurance and individual contracts of employment;
- patents and trademarks; and
- ownership or tenancy of immovable property.

**For example -**

The French vendor of a motorbike can be sued in England if that is where the motorbike was due to be delivered.

In the case of a traffic accident that happened in Germany between a German local and an English tourist, the German claimant can use the German courts.

As an alternative you can also choose to sue the defendant in the courts of the Member State in which that defendant lives or is resident in.

The Regulation does offer special protection to consumers, who can sue in their own courts.

Please note that the above description of the Brussels Regulation is merely a short summary of key points. For more information please visit the European Judicial Network website.

**Outside the European Union**

There are different Regulations in place for claims brought involving parties in countries outside the European Union, who are members of the European Free Trade Association (EFTA). The Lugano Convention of 16 September 1988 on Jurisdiction and the enforcement of judgments in civil and commercial matters govern these. At present apart from EU Member States, Switzerland, Norway and Iceland are contracting parties to this convention.

Similar provisions on jurisdiction apply to parties under this Convention.

**For example –**

The English vendor of a lorry can be sued in Norway if that is where the vehicle was to be delivered.

## Getting help

You may qualify for legal aid. For more information visit [www.gov.uk/legal-aid](http://www.gov.uk/legal-aid)

You may also get free legal advice from a Law Centre or a Citizens Advice Bureau at [www.adviceguide.org.uk](http://www.adviceguide.org.uk)

If you are a consumer you can also contact the United Kingdom European Consumer Centre:

UK European Consumer Centre

Trading Standards Institute

1 Sylvan Court, Sylvan Way

Southfields Business Park

Basildon, Essex SS15 6TH

(0)8456 04 05 03 (Monday to Friday: 10am to 3pm) [ecc@tsi.org.uk](mailto:ecc@tsi.org.uk) or [www.ukecc.net](http://www.ukecc.net)

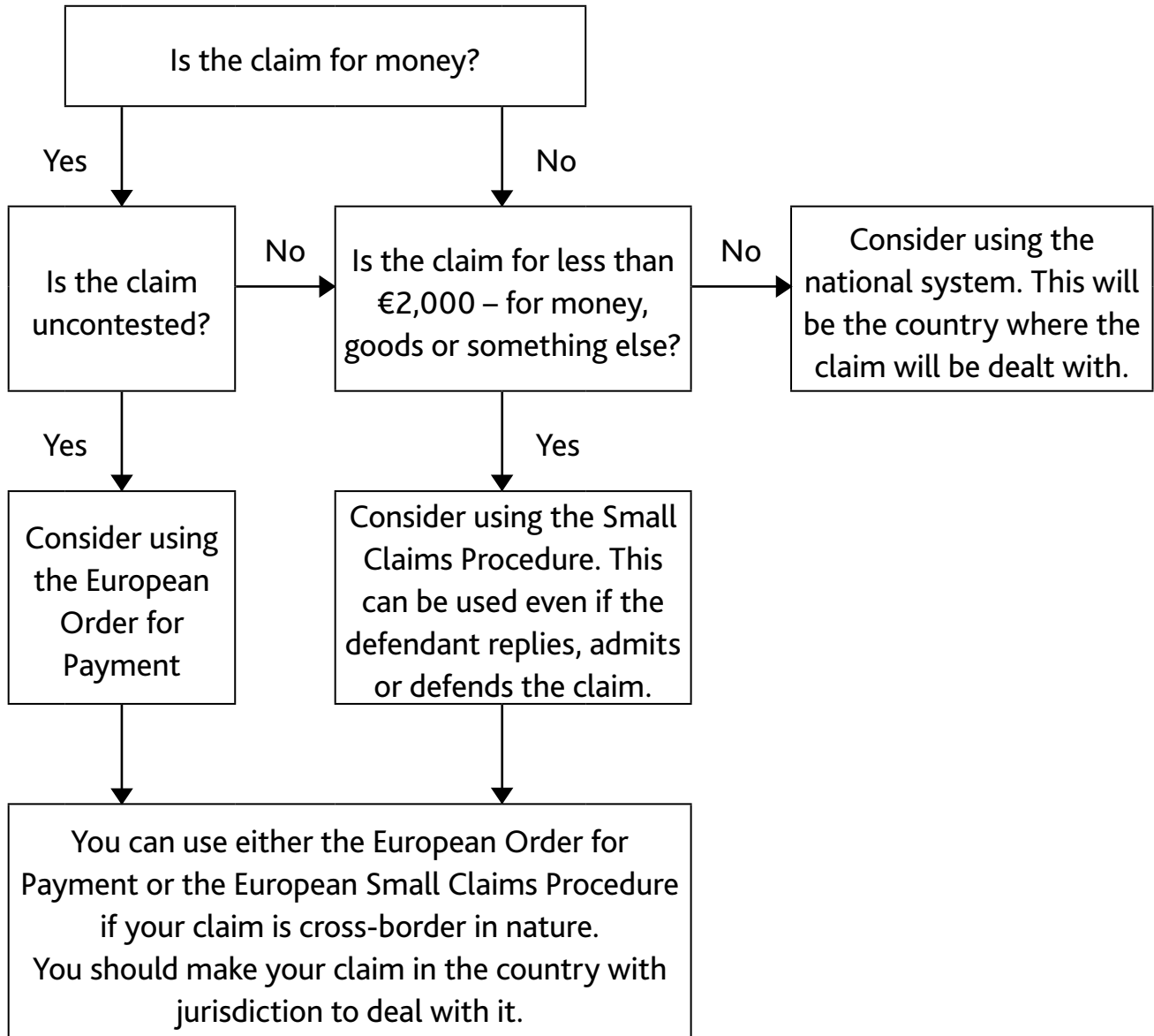
The European Commission's Judicial Atlas website has information on the names and addresses of all civil courts in the Member States and the geographical areas with which they deal and you can find this by using this link [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm)

If you want to make a cross-border claim there are a number of ways you can do so and the rest of this leaflet tells you more about them.

## What type of claim might it be?

The decision tree that follows can help you decide what type of claim to make.

### I want to make a claim across EU borders



# European Order for Payment Procedure (EOP)

## What is the European Order for Payment?

The EOP is a new procedure that makes it easier and quicker for creditors to recover uncontested monetary debts, in cross-border cases i.e. where one of the parties lives in a different EU Member State to where the case is to take place. The procedure operates on the basis of standard forms and a uniform process across all EU Member States. It can be used in both civil and commercial matters and does not require the use of lawyers. The procedure is optional and can be used instead of existing procedures under national law.

A creditor who obtains an order using this procedure will not have to undertake intermediate steps to enforce the decision in another EU Member State.

You cannot use this procedure if the claim:

- Is against a Member State because of its actions or its failure to act;
- Is about property involved in a marriage or a will;
- Is about bankruptcy or insolvency;
- Concerns social security;
- Does not involve a contract, unless there was an agreement or the debt was admitted;
- Is about settling debts from joint ownership of a property;
- Not for a specific amount of money or that sum is not yet due to be paid

A copy of the full Regulation is annexed to Part 78 of the Civil Procedure Rules

## I am a claimant what will I have to do to get an EOP?

All forms for the EOP are annexed to the Regulations. They are also available on the European Commission's Judicial Atlas website - [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm). To start the claim you should complete Form A. You will be asked to provide enough information about the evidence you have available to prove your claim so the defendant can decide whether to oppose the claim. There are certain requirements that have to be met, such as the grounds for the courts jurisdiction and the cross-border nature of the case. Please refer to the guidance notes contained on the application form.

## How much will it cost?

Once you have completed your claim form send or take the form to the appropriate court. There is a court fee payable for this process. The fee payable is determined by the amount of the claim. Guidance on court fees is available in the leaflet EX50 which is available on the justice website at <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

## What happens next?

The court will check to see if the form is properly completed and that it satisfies the requirements have been met (i.e. the cross border nature of the case in civil and commercial matters, the jurisdiction of the court in question, etc.).

If the conditions for applying for a European order for payment are met, the court issues and serves the order as soon as possible and normally within 30 days of the lodging of the application. The 30-day period does not include the time taken by the claimant to complete, rectify or amend his or her application.

A European order for payment informs a defendant that he or she may either pay the claimant the amount of the claim, or contest it. If the claim is to be contested, the defendant must lodge a statement of opposition with the court that issued the European order for payment. The statement of opposition must be sent within 30 days of the service of the order on the defendant.

The order becomes enforceable, automatically, unless the defendant lodges a statement of opposition with the court of origin.

If the application form is not complete, the court will return the form and allow the claimant an opportunity to complete or rectify the application by a certain date (normally within 30 days).

If the requirements are met for only part of the claim, the court may propose that application be amended. For example, if a creditor attempts to claim a sum of £5,000 but is only able to substantiate half of that amount, the court will amend the EOP for £2,500. The claimant is asked to accept the proposed European order for payment for the amount specified by the court within 30 days.

If the claimant accepts the court's proposal, the court will issue an EOP order for payment for the part of the claim accepted by the claimant. The consequences with respect to the remaining part of the initial claim are governed by national law. If the claimant fails to reply within the time limit specified by the court or refuses the court's proposal, the court rejects the application for a European order for payment in its entirety.

The court will reject an applications if:

- it fails to meet the necessary conditions;
- it is not founded;
- applicants fail to return a completed or modified application in time;
- applicants fail to reply within the time limit, or refuse the court's proposed amendment.

There is no right of appeal against this decision but this does not prevent you from making another claim perhaps using another method of claim.

## **What can the defendant do?**

The person who receives a European order for payment, i.e. the defendant, may lodge a statement of opposition with the court that issued the order for payment. The statement of opposition must be sent within 30 days of the order being served on the defendant. Statements of opposition are lodged using Form F, which defendants receive with the EOP.

The defendant can

- pay the amount due to you;
- they can object to the order by completing and returning a statement of opposition within 30 days of service of the order; or
- they may do nothing.

## **What happens if the defendant objects?**

If a defendant opposes your claim then the case will normally be transferred to the national system of the country issuing proceedings. You may not want this to happen because e.g. under the ordinary civil procedures the costs may be higher. You can choose not to have the case transferred to the national system by completing Appendix 2 of the application form (form A).

## **What happens if the defendant does nothing?**

If the defendant does not lodge a statement of opposition with the court within the time set the court will declare the European Order for Payment enforceable and send the declaration to you.

## **How do I enforce an EOP?**

An enforceable EOP will be treated as if it were a judgement by a court of the Member State where you are trying to enforce the claim.

The rules about enforcement vary from Member State to Member State. The European Judicial Network website has more information about other Members States. The European e-justice Portal has more information about enforcement in Member States which can be found at [http://e-justice.europa.eu/content\\_enforcement\\_of\\_judgments-51-en.do](http://e-justice.europa.eu/content_enforcement_of_judgments-51-en.do)

You must send the enforcement authorities of that Member State a copy of the European Order for payment which has been declared enforceable and if necessary a translation into the language of that Member State.

## **Enforcement in England and Wales**

For all enforcement options in England and Wales please see leaflet EX321 - I have a Judgment but the defendant hasn't paid. What do I do?

## **Is there anything that can stop enforcement?**

The defendant can, where certain requirements are met,

- Apply for a review of the European Order.
- Apply to have enforcement refused
- In very limited circumstances apply to have enforcement stopped or limited.



# European Small Claims Procedure

## What is the European Small Claims Procedure?

The European small claims procedure will for the first time provide consumers and businesses all over Europe with a uniform, speedy and affordable debt recovery process for low value claims in cross-border cases. The procedure will apply in civil and commercial matters where the value of a claim does not exceed EU 2000. The procedure applies to monetary claims as well as to non-monetary claims.

The ESCP introduces standard forms to be used by the parties and the court across the EU and establishes time limits for the parties and for the court in order to simplify and speed up litigation concerning small claims.

The procedure is a written one, unless the court considers an oral hearing is necessary. The court may hold a hearing or take evidence through a videoconference or other communications technology if the technical means are available. You do not need to be legally represented. However, if the other party does seek legal representation you may be liable for those costs if you lose. The unsuccessful party will be liable for the costs of the proceedings, which may include such legal costs. However, the court can decide not to award costs to the successful party to the extent that they were unnecessarily incurred or disproportionate to the claim.

A judgment given under this procedure shall be recognised and enforced in another Member State automatically and without any possibility of opposing its recognition

A copy of the full Regulation is annexed to Part 78 of the Civil Procedure Rules

The procedure cannot be used in claims concerning:

- the status or legal capacity of natural persons;
- property involved in a marriage or a will or maintenance obligations;
- bankruptcy or insolvency;
- social security;
- arbitration;
- employment law;
- tenancies, with the exception of actions on monetary claims;
- privacy, defamation.

## **What will I have to do?**

All forms for the ESCP are available on the European Commission's Judicial Atlas website - [http://ec.europa.eu/justice\\_home/judicialatlascivil/html/index\\_en.htm](http://ec.europa.eu/justice_home/judicialatlascivil/html/index_en.htm). In England and Wales a claim must be commenced in the County Court. The procedure introduces standard forms and Form A must be used to start proceedings. The form itself contains detailed guidance notes to assist you in completing it. It is important that you read them carefully. You will be asked to provide enough information about the evidence you have available to prove your claim, and to enable the defendant to be able to choose whether to defend the claim. This may include any relevant supporting documents where appropriate.

## **How much will it cost?**

Once you have completed your claim form send or take the form to the appropriate court. There is a court fee payable for this process. The fee payable is determined by the amount of the claim. Guidance on court fees is available on the justice website <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>

## **What happens next?**

If the form does not meet the requirements for the European small claims procedure your claim will be transferred into the national procedure of the court dealing with the claim, unless you ask to withdraw your claim, e.g. because you think that the costs of the case under the national system will be too high.

If the form is incorrectly completed the court will send it back to you allowing you 30 days to complete/rectify the claim form.

If the form is properly completed and it satisfies the requirements for the European small claims procedure the court will send the defendant a copy of the claim form and a reply form so they can decide whether or not to defend the claim. The defendant will have 30 days from service of the claim to respond to it.

## **What can the defendant do?**

The defendant can

- pay the amount due to you – you should tell the court if he does;
- he can dispute the whole or part of your claim, or make a counter claim; or
- he may do nothing.

He may also make an offer to settle. It is for you to decide whether or not to accept an offer, but check what will happen about the costs of the claim.

## **What happens if the defendant disputes the claim or makes a counter claim?**

You will receive a copy of the defence form and/or the counter claim and you can tell the court whether you agree or disagree with the defence and if you disagree explain why.

The claim will be considered by the judge who can ask for more information from the parties, take evidence, or summons you to a hearing, which may be by videoconference or telephone. The judge will give a decision within 30 days of any oral hearing or after having received all the necessary information, and a copy of the decision will be sent to all parties.

## **What happens if the defendant does nothing?**

If the defendant has not replied within 30 days of the court serving the claim and the judge does not want additional information, evidence or to hold a hearing he will give a decision, a copy of which will be sent to you.

## **What other costs might I be able to claim if I win?**

Other costs you may be allowed include:

- Any court fees you have paid
- Cost of the proceedings (e.g. translation costs, lawyers' fees etc.)

It is important to note that the unsuccessful party will have to pay the costs of the proceedings as long as they were necessary and not disproportionate to the claim.

## **Can I appeal if I lose?**

The availability of an appeal under this procedure is determined by each individual EU Member State. In England and Wales an appeal can be made in accordance with Part 52 of the Civil Procedure Rules.

## **How do I enforce the claim?**

The court's judgment will be recognised and enforceable in all other EU Member States. On request, the court will also issue a certificate concerning the judgment at no extra cost.

The rules about enforcement vary from Member State to Member State. The European e-Justice Portal has more information about enforcement in Member States which can be found at [https://e-justice.europa.eu/content\\_enforcement\\_of\\_judgments-51-en.do](https://e-justice.europa.eu/content_enforcement_of_judgments-51-en.do)

You must send the enforcement authorities of that Member State a copy of the judgment and a copy of a European Small Claims judgment certificate and if necessary a translation into the language of that Member State.

## **Enforcement in England and Wales**

For all enforcement options in England and Wales please see leaflet *EX321 - I have a Judgment but the defendant hasn't paid. What do I do?*

### **Is there anything that can stop enforcement?**

The defendant can, where certain requirements of the Regulation are met,

- Apply for a review of the judgment
- Apply to have enforcement refused
- In very limited circumstances apply to have enforcement stopped or limited.
- Appeal the decision.